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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 877 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVINCHANDRA DAHYALAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 877 of 1996

M/S S & S ASSOCIATES for Petitioner No. 1

MR HM BHAGAT for Respondent No. 1

NOTICE SERVED for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the

Constitution of India, the petitioner has challenged the legality and validity of the order of the Dy.Collector, Stamp Duty Valuation, Surat dated 08.08.1995 by which the Dy.Collector, Stamp Duty Valuation, Surat in exercise of the powers under Section 32-A of the Bombay Stamp Act, 1958 (`the Act' for short) has passed the order directing petitioner to pay the amount of Rs. 19,070/- by way of deficit stamp duty and Rs.250/- by way of penalty.

#. The petitioner purchased the property in question by registered Sale Deed dated 13.04.1992 which was presented before the Sub-Registrar, Surat on the same day i.e. on 13.04.1992 which was registered at Sr.No.3879. As the Sub-Registrar, Surat was of the opinion that the market value which is fixed by the petitioner on the basis on which the stamp duty is paid is not correct market value, he made reference to the Dy.Collector, Stamp Duty Valuation, Surat for determining the correct market value under Section 32-A of the Act, notice under Rule 4(2) of the Market Value Rules, 1984 (`the Rules' for short) came to be issued on 17.04.1994 and the Dy.Collector fixed the provisional value of the land question at Rs.2,90,700/instead of Rs.99,999/- and the petitioner was directed to produce necessary evidence with regard to the market value and directed to remain present on 25.04.1994. Thereafter, the petitioner appeared before respondent no. 4 and made submissions and explained the position and condition with regard to the property in question. It was pointed out that the area in which the flat is situated is not in the posh area and even the condition of the flat was also mentioned. It was also stated that the material which was used for the purpose of construction was also not good and therefore requested to withdraw the notice.

#. In spite of the aforesaid facts, without discussing anything the order came to be passed on 08.08.1995 determining the market value of the property in question at Rs.2,90,700/- and the petitioner was directed to pay further amount of Rs.19,070/- being the deficit stamp duty and Rs.250/- by way of penalty. Being aggrieved and dissatisfied with the said order dated 08.08.1995, the petitioner has preferred this petition under Article 226/227 of the Constitution of India.

#. It is true that the petitioner had statutory remedy available by way of preferring an appeal before the Chief Controlling Revenue Authority, Gandhinagar, but, in view of the fact that the matter is already admitted and the same is pending since 1996, it will not be proper to relegate the petitioner to prefer an appeal now. Under

the circumstances, the present petition is decided on merits.

#. No body has remained present on behalf of the petitioner, however, from the pleadings in the petition as well as in the impugned order dated 08.08.1995, it appears that no reasons have been assigned by respondent no. 2 justifying the market value at Rs.2,90,700/-. Even in the impugned order there is no observation with regard to the submissions made by the petitioner and that as to what has weighed with respondent no. 2 in fixing and determining the market value at Rs.2,90,700/-. No basis is mentioned in the order justifying fixation of the market value at Rs.2,90,700/-. Even in the notice which was issued under Rule 4 of the Rules, no basis was mentioned while determining the provisional market value which is mandatory under Rule 4 and in view of the fact that the impugned order is non-speaking order, the present petition is required to be allowed by remanding the matter to respondent no. 2 for passing afresh speaking orders on its own merits and in accordance with law.

#. However, Mr.Bhate learned A.G.P. has tried to support the order dated 08.08.1995 but he is not in a position to point out any justification for fixing the market value of the property in question at Rs.2,90,700/-.

#. For the reasons stated above and considering the fact that the impugned order is non-speaking order and no reasons have been mentioned while determining the market value of the property in question at Rs.2,90,700/-, the impugned order dated 08.08.1995 is quashed and set aside. The matter is remanded to respondent no. 2 for passing a fresh order on its own merits and in accordance with law considering the provisions of Rule 4(2) as well as Rule 8 of the Rules after giving opportunity to the petitioner.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)